

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

May 27, 2008

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, May 27, 2008 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Ernest Ackermann in the Board of Supervisors Chambers in the Stafford County Government Center. Mr. Ackermann introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ackermann stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Larry Ingalls, Cecelia Kirkman, John Overbey, Robert Gibbons, Michael Levy and Steven Beauch

Members Absent: None

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary
Amber Forestier, Environmental Planner

Mr. Levy arrived at 7:04 P.M.

Mr. Ackermann asked if there were changes to the advertised agenda.

Mrs. Musante stated there were no changes.

Mr. Ackermann stated a discussion would take place under unfinished business regarding a bylaw revision and two legal matters.

PUBLIC HEARINGS

V08-2/2800256 - JOHN H. GULLEDGE - Request a Variance of Stafford County Code, Section 28-62(f) (1) (c) "Development Conditions" to construct a bulkhead/retaining wall on Assessor's Parcel 49C-2-3-E. The property is zoned A-2, Suburban Residential, located at 159 Indian Point Road.

Mrs. Musante read the staff report. She stated the dwelling was constructed in 1961 and Amber Forestier, Environmental Planner was available for questions.

Mr. Ingalls asked how staff determined what mean high water was.

Mrs. Forestier stated staff used the high tides on the N.O.A.A. (National Oceanic and Atmospheric Administration) website and had visited the site 3 times at high tide and the high water line was always in front of the existing remnants of the old wall.

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Mr. Ingalls asked if the water had to be above the mean high water level to go before the Board of Zoning Appeals as opposed to the Wetlands Board.

Mrs. Forestier stated yes.

Mr. Beauch stated that the staff report states the structure would not be considered a shoreline erosion control structure under Chesapeake Bay Overlay District and asked why it would not be considered.

Mrs. Forestier stated because it was outside of the high tide area.

Ms. Kirkman asked if the Major Water Quality Impact Assessment had been reviewed.

Mrs. Forestier stated yes.

Ms. Kirkman asked if the applicant met the requirements according to the Chesapeake Bay Ordinance.

Mrs. Forestier stated the Major Water Quality Impact Assessment for shoreline erosion control structures that were submitted with Wetlands Board applications were normally not as detailed.

Ms. Kirkman asked if a soils report was included.

Mrs. Forestier stated it was not required.

Ms. Kirkman stated she did not see discussion of soil types within the package.

Ms. Forestier stated normally that was not a requirement, soils in wetlands cases were normally vegetated or non-vegetated mudflats.

John Gullledge, President of United Land and Marine, stated he had been building bulkheads for approximately 15 years and this was the first Variance he was required to submit. He stated he had received the okay from the Army Corps of Engineers (ACOE) and Virginia Marine Resource Commission (VMRC). He stated the existing property was 8 or 10 inches tall on the shore. He stated the Bulkhead was a necessary structure and the bank had suffered major erosion with the last few storms.

Mr. Gibbons asked how far the bulkhead would be from the mean high tide.

Mr. Gullledge stated approximately 1 foot. He stated the distance of the bulkhead from the existing structure was 10 or 12 inches wide.

Ms. Kirkman asked who instructed the applicant to build behind the existing structure.

Mr. Gullledge stated he met with County staff and decided that would be the best location for the bulkhead.

Ms. Kirkman asked what the rationale was for building behind the existing concrete.

Mrs. Forestier stated it would not impact the wetlands within the jurisdiction of the Wetlands Board.

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Ms. Kirkman asked the applicant why construction was started before a permit was issued.

Mr. Gullledge stated he was guilty of starting the project before the building permit was issued. He stated in the past once ACOE and VMRC reviewed the project, the county normally would allow the applicant to begin. He stated he began the project due to lack of work.

Ms. Kirkman asked why Mr. Gullledge was the applicant and not the property owners.

Mr. Gullledge stated it was a service he provided.

Ms. Kirkman asked if Mr. Gullledge normally would apply for Variances.

Mr. Gullledge stated he never had to apply for a Variance.

Ms. Kirkman asked what would happen if the Variance were not granted.

Mr. Gullledge stated the owners would suffer major erosion.

Ms. Kirkman asked Mr. Gullledge to explain how the property owner's situation was different from any other properties trying to control erosion.

Mr. Gullledge stated previously he built in front of existing bulkheads and after speaking with staff, the recommendation was to put the bulkhead behind the existing structure.

Mr. Beauch asked if the applicant agreed that the bulkhead was a necessary structure to prevent erosion.

Mr. Gullledge stated yes.

Mr. Beauch asked if it was detrimental to Potomac Creek, the Chesapeake Bay and Potomac River to allow the bank to erode.

Mr. Gullledge stated yes. He stated the owners lost approximately 10 to 12 feet of bank during Hurricane Isabel.

Mr. Beauch asked if the bulkhead would stop continued erosion.

Mr. Gullledge stated yes.

Mr. Ingalls asked if fees were associated with putting the bulkhead in front of the existing structure. He asked if the wall was moved to avoid any fees associated.

Mr. Gullledge stated the fees had no impact and relied on the judgment of the staff.

Mr. Ingalls stated it would be easier to get approval from the Wetlands Board than the Board of Zoning Appeals. He asked if there was an analysis to determine if the top of the wall was above the 100-year base flood plain elevation.

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Mr. Gullledge stated generally the 100 year base flood plain was 8 or 9 feet above mean high tide and the bulkhead was 4 feet above mean high tide; the 100 year flood plain level would be above the bulkhead.

Mr. Ackermann opened the hearing for public comment.

Romney Andersen, owner, apologized for coming before the Board and stated he thought when the project started there was a permit issued. He stated originally the wall was planned to be in front of the old wall. He stated it would have been very expensive to have the old wall removed. He stated there had been many storms that had eroded the banks.

Mr. Ackermann closed the public comment session.

Mr. Ingalls asked why the wall would be moved.

Mrs. Forestier stated the Wetlands Board instituted in-lieu fees for loss of Wetlands, which was required by the state. She stated the state definition of shoreline was between mean high and mean low tide, which means a wall above mean high tide would require a Variance.

Ms. Kirkman asked if staff advised people to move the walls behind the existing structure to avoid paying in-lieu fees.

Mrs. Forestier stated the applicant started the process before the in-lieu fees were approved. She stated in this case, she did advise the applicant. She stated the effect would be the same at this site wherever the wall was placed.

Mr. Ackermann asked if the new structure was placed in front of the existing structure, would the applicant have to come before the Board of Zoning Appeals.

Mrs. Forestier stated the applicant would have applied with the Wetlands Board.

Mr. Beauch asked if the purpose of the Wetlands Board to collect fees or protect the wetlands.

Mrs. Forestier stated to protect the wetlands. She stated the in-lieu fees collected would go to create wetlands or restore wetlands.

Mr. Beauch asked if it was better to not disturb the wetlands.

Mrs. Forestier stated yes.

Mr. Beauch asked if Mrs. Forestier agreed that the bulkhead was necessary to stop erosion.

Mrs. Forestier stated if this application were presented to the Wetlands Board, she would recommend approval of the application.

Mr. Levy asked if County Code had been amended to require a Variance; currently the Code does not require a Variance.

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Mrs. Forestier stated the definition of shoreline in the State Chesapeake Bay Regulations was between mean low and mean high water. She stated it would not require a change in the county ordinance.

Mr. Levy asked if the permit application was in accordance with Section 28-62 (f)(1)(a) of the County Code; why would there be a requirement for a Variance if the County Code had not been amended to incorporate the new requirements.

Mrs. Forestier stated it did not fit the definition of a shoreline structure per the definition that already exists in the State Code.

Mr. Levy asked why not in the County Code.

Mrs. Forestier stated the County does not have a definition for shoreline structure.

Ms. Kirkman stated the reason the application was in front of the Board of Zoning Appeals was that the work was started without a permit. She stated when the permit was reviewed, it was discovered the project was in the Chesapeake Bay CRPA and was a violation of the Zoning Ordinance.

Mrs. Forestier stated commencement of work was a violation.

Mr. Beauch asked if the reason the Board was hearing this application was because the work had already started.

Mrs. Forestier stated the Variance would have been required even if work had not started.

Ms. Kirkman asked if the applicant would have applied for the permit and waited for approval, the property owners would have had a choice about applying for a Variance or going to the Wetlands Board.

Mrs. Forestier stated yes.

Mr. Ingalls asked Mrs. Forestier, in her opinion, the wall was in a better location.

Mrs. Forestier stated yes.

Mr. Gulledge stated the property owners were not aware of any fees until they received a letter from the County. He stated the fees did not impact the location of the wall, the wall was in the best location for the shoreline.

Ms. Kirkman asked Mr. Gulledge why he did not apply to the Wetlands Board.

Mr. Gulledge stated the project was already seven (7) months in progress and more erosion has occurred in the month he did not work on the project.

Mr. Ingalls asked how far the project was from completion.

Mr. Gulledge stated he was about fifty percent complete.

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Mr. Beauch stated the county suggested a Mitigation Plan and asked if the applicant had seen the plan.

Mr. Gulledge stated he had not seen the Mitigation Plan.

Ms. Kirkman stated she looked at the pictures of the site, which showed an excavator and asked if there were sediment and erosion control measures in place.

Mr. Gulledge stated there was black filter fabric provided along the wall.

Ms. Kirkman stated the pictures were before the fence was put in place and did not see anything to catch the sediment.

Mr. Gulledge stated there was nothing there but the deteriorated structure.

Motion:

Mr. Gibbons made a motion for approval of the Variance.

Mr. Levy seconded the motion.

Mr. Ackermann reiterated the motion was to approve V08-2/2800256.

Mr. Gibbons stated the property owners need the bulkhead and was in favor of the application.

Mr. Beauch stated he was in support of the motion and believed that the application met the requirements of the Ordinance. He stated it was unfortunate that the work had already started.

Mr. Levy stated he was concerned the work was started without a permit and the lack of the silt fence, which was evident in the photos. He stated the ultimate impact of the determination would fall on the property owners who were not the applicant and should have been. He asked that the motion be amended to require the applicant to sign the Chesapeake Bay Area Restoration Plan, which would require the applicant to be responsible for meeting the requirements the county set forth.

Mr. Ackermann stated that could be added as a friendly amendment.

Mr. Ingalls stated he would like to have the conditions required by staff added to the motion and would recommend approval.

Mr. Ackermann stated that could be added as a friendly amendment.

Ms. Kirkman stated she felt for the property owners, anybody that was done wrong by contractors know how the applicant felt. She stated the BZA was not a place to resolve problems that had been created by contractors; the BZA was also not the body to determine the best place to build soil and erosion control structures and the best way to go about doing that. She stated she opposed the motion to approve the Variance because she did not believe it met any of the conditions of a Variance, first, the condition was self imposed, in order to be eligible for a Variance the condition cannot be self created. She stated second, the Board had not heard a sufficient argument that there was something unique about this site that differentiates it from other waterfront properties that need this kind of work.

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She stated third, the applicant stated that if the Variance was not granted the property owners would continue to enjoy benefits from there property. Additionally, the application does not meet the additional requirement that were required of a Chesapeake Bay Variance, specifically the requirements for Major Water Quality Impact Assessment. She stated for example, there were specific calculations required for those Major Water Impact Assessments, including calculations that estimate pre and post development pollutant loads in runoff, that was not found anywhere in the Major Water Quality Impact Assessment. She stated there were several other elements missing as well. She stated she felt for the property owners, she did not feel this was the appropriate place to address the wrongs that had been done; she stated the Wetlands Board knows the best way to control waterfront erosion. She stated it does not meet the criteria for a Variance.

Vote:

The motion to approve with the conditions staff recommended, additionally, the contractor and property owner would sign a Mitigation Restoration Plan passed 6-1.

Mr. Ackermann – yes
Ms. Kirkman – no
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – yes

SE08-2/2800257 - JENNIFER & CHRISTOPHER CHEEK - Requests a Special Exception per Stafford County Code, 28-35, Table 3.1, "District Uses and Standards", to allow custom car care as a Rural Home Business on Assessor's parcel 16A-3-23. The property was zoned A-1, Agricultural, located at 604 Cropp Road.

Mrs. Musante read the staff report. She stated the applicant was requesting a Special Exception to allow custom care car as a Rural Home Business on a three (3) plus acre A-1, Agricultural, property. She stated currently the business was being conducted with one employee in the 2200 square foot garage and the property has a six (6) foot privacy fence along side of the property. She stated the single-family dwelling was constructed in 1999. A permit for a garage was issued on February 13, 2002. She stated the development conditions were days and hours of operation, provide off street parking, customer visits by appointment only and sign constructed and installed in accordance with Rural Home Business Standards.

Mr. Ingalls asked what the requirements regarding a sign were according to Rural Home Business Standards.

Mrs. Musante read from County Code 28-25, which stated, the rural home business shall be allowed one (1) unlighted facade or monument style sign not exceed 8 feet in area and 5 feet in height, such sign shall be setback at least fifteen (15) from any property line.

Mr. Ingalls asked if the interpretation was eight (8) square feet.

Mrs. Musante stated that was her understanding.

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Ms. Kirkman asked what activities would take place with this use.

Mrs. Musante stated the applicant would build or remodel custom cars.

Christopher Cheek stated he was the sole proprietor for the business, which specializes in custom car care.

Jennifer Cheek stated custom car care included aluminum and steel fabrications, works with electrical systems and installation of custom parts. She stated the work would be completed within the garage located on the property and Mr. Cheek had been a mechanic by trade for ten (10) years. She stated the garage was at the back of the property and not visible from the road. She stated a six (6) foot privacy fence with gate surrounded the property.

Ms. Kirkman asked how the applicant would dispose of hazardous materials.

Mr. Cheeks stated he did not have hazardous waste but in the rare event he would have to deal with oil, it would be placed in a container and dropped off at one of the auto parts stores that dispose of hazardous waste.

Mr. Beauch asked if the applicant does engine work.

Mr. Cheek stated no.

Mr. Beauch asked what kind of work would be performed.

Mr. Cheek stated he customizes cars that are used at a drag strip.

Mr. Overbey asked if all the work was structural.

Mr. Cheek stated yes.

Mr. Ingalls asked the applicant who his clients were.

Mr. Cheek stated most times the clients would be drag racers and clients that go to car shows. He stated vehicles brought to the shop would be brought in trailers.

Mr. Ingalls asked if the trailers were left on the property or if the clients take the trailers home.

Mr. Cheek stated the client would take the trailers off the property. He stated in some cases, the trailers were left on the property if the job would be quick.

Mrs. Cheek stated jobs would not be accepted until they are ready to be worked on.

Mr. Ingalls asked how clients would hear about the business.

Mr. Cheek stated he attends races and his clients were mostly word of mouth.

Mrs. Cheek stated they do not advertise or have a sign at the front of the property.

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Mr. Ackermann asked if there were any other specialty shops like this business in Stafford County.

Mr. Cheek stated no.

Mr. Ingalls asked if the hours of operation would be Monday through Saturday 7:30 AM to 8:00 PM.

Mrs. Cheek stated yes, by appointment only.

Mr. Beauch stated he would like to thank the applicant for including the list of the neighbors.

Mr. Ackermann opened the hearing for public comment.

Mark Kennedy stated he and his wife live across the street from the applicants. He stated he did not know there was a business at the property, there was no affect to the neighbors and he had no problem with the Mr. and Mrs. Cheek continuing their business.

Mr. Ackermann closed the public comment portion of the hearing.

Motion:

Mr. Gibbons made a motion to approve the application.

Ms. Kirkman seconded the motion.

Mr. Ackermann reiterated the motion.

Mr. Ingalls confirmed the motion would include the development conditions recommended by staff.

Mr. Ackermann stated that was correct.

Vote:

The motion to approve the Special Exception passed 7-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – yes

Mr. Ackermann advised the applicant a letter would be sent which would state the Special Exception had been granted.

SE08-3/2800258 – MARK W. & ELAINE M. BOLTON - Requests a Special Exception per Stafford County Code, 28-273, "Nonconforming Structures or Residential Buildings", to allow a covered front porch as an addition to an existing nonconforming single family dwelling on Assessor's Parcel 54J-3-

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1-6. The property is zoned R-1, Suburban Residential, located at 30 Wayne Street, Ferry Farm Subdivision.

Mrs. Musante read the staff report. She stated the applicant was requesting a Special Exception to construct a 77 square foot covered front porch on a corner lot. She stated the dwelling was 64 feet from the front property line and 23.5 feet from the street facing side yard, which does not meet the requirement of 25 feet. She stated there would be no further encroachment into the non-conforming area. She stated the dwelling was constructed in 1962 and a permit was put on hold pending a decision from the Board of Zoning Appeals.

Mr. Ingalls asked if 1962 was prior to zoning.

Mrs. Musante stated the adoption date was 1978.

Elaine Bolton stated she and her husband, Mark, would like to build a front porch on the house to beautify the home and neighborhood. She stated her insurance would be cancelled if the porch was not repaired. She stated a roof would make the home look nice and updated.

Ms. Kirkman confirmed there would be no further encroachment.

Mrs. Bolton stated that was correct.

Mr. Levy asked if there was a deck that would be fixed.

Mr. Bolton stated there was a concrete porch with iron railings that were loose.

Mrs. Bolton stated when the home was purchased it was not in good condition. She stated the porch was a liability.

Mr. Ackermann opened the hearing for public comment.

Mr. Ackermann closed the public comment portion of the hearing.

Motion:

Mr. Levy made a motion to approve the Special Exception.

Mr. Gibbons seconded the motion.

Mr. Ingalls stated he would vote for the approval because the Special Exception met the requirements in the ordinance pertaining to Special Exceptions.

Vote:

The motion to approve the Special Exception passed 7-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

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Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – yes

UNFINISHED BUSINESS

Mr. Ackermann stated the Board could discuss any amendments to the bylaws.

Mr. Levy stated there was a discussion regarding the Board disclosing any ex parte communications, which was not currently a requirement of the bylaws.

Motion:

Mr. Levy made a motion to amend the bylaws to add to section 6.1, new (d) Board members disclose any communication with the public or the applicant and re-letter the following items accordingly.

Mr. Gibbons seconded the motion.

Mr. Beauch asked Mr. Levy to describe what ex parte communication meant.

Mr. Levy stated if any Board member had any communication with an applicant or anyone regarding a specific item they would be required to disclose that discussion to the Board.

Mr. Ingalls asked how much would be expected by the Board to report.

Mr. Ackermann stated a summary of any communication would be sufficient.

Vote:

The motion to amend the bylaws passed 7-0.

Mr. Ackermann – yes
Ms. Kirkman – yes
Mr. Ingalls – yes
Mr. Overbey – yes
Mr. Gibbons – yes
Mr. Levy – yes
Mr. Beauch – yes

Mr. Ackermann stated he had received two (2) Writ of Certiorari's; the MJ Express appeal of the Board of Zoning Appeals, March 25, 2008 decision and the Board of Supervisors appealing the Board of Zoning Appeals decision on April 22, 2008. He stated the Board of Zoning Appeals should ask the Board of Supervisors to provide counsel on behalf of the Board of Zoning Appeals.

Ms. Kirkman stated the Board of Supervisors had not allocated funds for outside counsel and the requests would likely not be granted.

Mr. Gibbons stated if the Board of Supervisors denied the request, the procedure would then be to go to the Chief Judge of the Circuit Court and the Judge would send a request to the locality to request counsel.

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Motion:

Mr. Overbey made a motion to request representation from the Board of Supervisors in the Appealed cases for MJ Express and Westlake and if the Board of Supervisors denied the request, the Board of Zoning Appeals would take additional steps to obtain representation.

Mr. Gibbons seconded the motion.

Mr. Ingalls stated that was the appropriate steps to take.

Mr. Ackermann asked if Mr. Levy and Mr. Gibbons would help draft a request to the Board of Supervisors.

Vote:

The motion passed 7-0.

Mr. Ackermann – yes

Ms. Kirkman – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Gibbons – yes

Mr. Levy – yes

Mr. Beauch – yes

REPORT BY ZONING ADMINISTRATOR

Ms. Hudson reiterated the items discussed previously regarding the Writ of Certiorari. She stated she requested that the Board of Zoning Appeals have access to the restroom within the Board Chambers and County Administration stated no. She thanked the administration staff the Department of Planning and Zoning for taking time to make the nametags for the Board.

Mrs. Musante stated the cases to be presented at the June Meeting.

Ms. Kirkman asked about the case of Inman/ Carder that was postponed based on the pursuit of a Conditional Use Permit.

Ms. Hudson stated that case would not be heard by the BZA as an appeal, the Board of Supervisors had granted permission for the county to pursue Conditional Use Permit for both the Carder Crone Inman and DeBord facilities.

Mr. Gibbons asked to have the Ordinance revised regarding area of a sign for rural home business.

Ms. Hudson stated the sign could not be larger then 8 square feet and not taller then 5 feet.

Mr. Ingalls stated the code did not state 8 square feet, it only stated 8 feet.

Ms. Hudson stated she would make a recommendation for the ordinance to be clarified.

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Mr. Gibbons stated the first case heard at the meeting should not have had to request a Variance.

Mr. Levy stated county staff had been given definitional advice by the state but had not been implemented in the county code.

Ms. Hudson stated she would discuss that with the Director of Planning and Zoning.

The Board discussed the timeframe allowed for all items and a list of all items submitted to the Circuit Court regarding the cases being appealed.

Mr. Levy stated all the items sent to the Circuit Court with a list of items submitted.

ADOPTION OF MINUTES

None

OTHER BUSINESS

None

ADJOURMENT

Motion:

Mr. Overbey made a motion for adjournment.

Mr. Levy seconded the motion.

The meeting was adjourned at 8:53 p.m.

Ernest Ackermann, Chairman
Board of Zoning Appeals